

INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE
ALCOHOL AND TOBACCO TAX DIVISION



WASHINGTON 25, D. C.

Industry Circular No. 59-35

May 29, 1959

SEMIMONTHLY BEER TAX RETURN SYSTEM

Brewers and others concerned:

Purpose. The purpose of this industry circular is to give you preliminary information that will help you to effectively plan for a smooth transition from the payment of tax on beer by daily return to the payment of such tax by semimonthly return.

Background. The Secretary of the Treasury has authorized the payment of tax on beer by semimonthly return. This system of tax payment will be mandatory, except where a brewer is in default of any payment of the tax on beer or does not have on file a bond in sufficient penal sum, in which instances the tax must be prepaid. A preliminary draft of regulations for the payment of tax on beer by semimonthly return has been prepared and, as the new system is to be effective June 24, 1959, we are furnishing you a copy so you may be as fully advised as possible at the earliest possible date.

General. The proposed regulations will contain requirements for bonds and consents, procedures for filing returns, and other provisions necessary to the semimonthly return system. Conferences have been held with representatives of the Surety Association of America, 60 John Street, New York 38, New York, to acquaint them with the new bonding requirements. They have assured us that they will issue instructions by June 4th so that all bonding companies will be prepared to act expeditiously on requests for bonds conforming with the proposed regulations.

Bond requirements. If you intend to defer the payment of tax on beer, you must file a new bond, or a strengthening bond, so that the penal sum of your bond (or bonds) shall be in an amount equal to the amount of the penal sum required on such bond by Part 245 plus an amount not less than the tax on the maximum quantity of beer to be removed for consumption or sale during any semimonthly return period. The maximum penal sum shall not be more than \$500,000. Where the penal sum of your present bond is not sufficient, you must file either a superseding bond or a strengthening bond before June 24th. If you file a strengthening bond, you must also file a consent of surety, Form 1533, on your present bond. The wording of the consent is given in § 170.404 of the attached draft.

Period of semimonthly return. The semimonthly periods for the returns run from the 9th through the 23rd of one month and from the 24th of one month through the 8th of the next month, but are keyed to your business day (24-hour cycle). For example, if your business day is other than a calendar day, your business day beginning on the 9th day of the month will be the first day covered by the return for the period from the 9th through the 23rd. You must file a return even though you do not remove beer for consumption or sale during a return period and regardless of whether any or all of the tax for the period has been prepaid. The present return, Form 2034, has been revised for use under the new regulations. The revised form will be filled out in much the same manner as heretofore. The principal changes in the form are the addition of schedule D for the entry of daily removals, and amendment of the instructions. You will enter the totals of each day's removals of keg and bottled beer subject to tax in schedule D, and will enter the aggregate of such daily totals in schedule A. Any beer on which the tax was prepaid during the period covered by the return will be reported in schedule C as an adjustment decreasing the tax. The serial numbers of the prepayment returns will be shown in schedule C.

Time for filing semimonthly return. The semimonthly tax return, Form 2034, shall be filed not later than the close of the third calendar day next succeeding the 8th or 23rd calendar day of the month, as the case may be, excluding any Saturday, Sunday, or legal holiday. Thus, for example, returns for the first period (June 24 through July 8) need not be filed until July 13, as Saturday, July 11, and Sunday, July 12, would be excluded. If your business day for July 8th ends on the 9th, you will not be given additional filing time beyond July 13th since, although the return period takes into account your business day, the last day of filing must be the third calendar day.

Prepayment return. The regulations will require that the tax on beer must be prepaid if the penal sum of your bond (or bonds) is not sufficient, or if you are for any reason in default in your payments of the tax on beer. To prepay the tax on beer, you will use Form 2034, modifying the heading of the form by inserting the word "PREPAYMENT" immediately before the title. When Form 2034 is used to prepay the tax on beer, it must be filed, with remittance, before beer is "removed for consumption or sale" as defined in § 170.403 of the attached draft. The remittance submitted under the default provisions of the regulations must be in cash or in the form of a money order or a certified, cashier's or treasurer's check.

Records of removals. The regulations will require you to keep a record of beer removed for consumption or sale and of beer removed

without payment of tax to support the entries for each day shown in your tax return, Form 2034. The details and requirements for the record of removals are given in § 170.409 of the attached draft.

Preparation and disposition of returns. Your returns on Form 2034 whether semimonthly or prepayment, will be prepared in quadruplicate. You will forward or deliver the original and two copies (with remittance) to the district director and, at the same time, forward one copy to your assistant regional commissioner.

Form of remittance. No change has been made in the rules governing the form of remittances which must accompany your returns. Thus, you will continue to be guided by the provisions of Part 245 in this respect.

Return of deposits. If you have made a deposit with your district director to obtain a one-day extension of time for filing your daily return, such deposit will be returned to you after June 25. You need not file a claim for return of the deposit.

CAUTION

Effective July 1, 1959, the law will provide that beer returned to the brewery on the same day it was removed shall not be considered to have been "removed for consumption or sale." Therefore, if your business day is not a calendar day, caution should be exercised to exclude from the daily totals of tax determination any beer which is returned on the same business day on which it was removed. For example, if your business day begins at 10 a.m., beer which is removed after 10 a.m. one day and is returned before 10 a.m. the next day, is considered as returned on the same day as removed and should not be included in the total amount of beer on which tax is determined for that day.

Inquiries. Any inquiries regarding this industry circular should refer to its number and be addressed to the office of your assistant regional commissioner (alcohol and tobacco tax).



Dwight E. Avis
Director, Alcohol and Tobacco Tax Division

Attachment

Preliminary Draft

SUBPART R - PAYMENT OF TAX ON BEER

Sec.

- 170.401 Scope of subpart.
- 170.402 General.
- 170.403 Meaning of terms.
- 170.404 Penal sum of bond, Form 1566: consent of surety.
- 170.405 Semimonthly return.
- 170.406 Brewer in default; tax to be prepaid.
- 170.407 Prepayment of tax.
- 170.408 Date of mailing and delivering of returns.
- 170.409 Records of removals, to support Form 2034.
- 170.410 Return of amounts deposited.

Authority: §§ 170.401 to 170.410 issued under sec. 7805, I.R.C., 68A Stat. 917; 26 U.S.C. 7805. Other statutory provisions interpreted or applied are cited to text in parentheses.

§ 170.401 Scope of subpart.

This subpart provides temporary regulations for payment by brewers qualified under chapter 51, I.R.C., of the internal revenue tax imposed on beer, and temporary procedures relating thereto.

§ 170.402 General.

Notwithstanding any other provision of Part 245 of this chapter relating to the payment of taxes on beer by breweries qualified under chapter 51, I.R.C., such taxes determined, on and after June 24, 1959, shall be paid and collected on the basis of a semimonthly or prepayment return as provided in this subpart.

§ 170.403 Meaning of terms.

When used in this subpart and in forms prescribed under this subpart, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meaning ascribed in Part 245 of this chapter, except

as otherwise specifically defined in this subpart.

Removed for Consumption or Sale. "Removed for consumption or sale" shall mean (a) the sale and transfer of possession of beer for consumption at the brewery, or (b) any removal of beer from the brewery (other than beer removed without payment of tax as authorized by law), except that such removal shall not include any beer which is returned to the brewery on the same business day such beer is removed therefrom for delivery: Provided, That as to transactions prior to July 1, 1959, "removal for consumption or sale" shall mean the sale or removal for consumption or sale of beer from the brewery (other than beer removed without payment of tax as authorized by law).

§ 170.404 Penal sum of bond, Form 1566: consent of surety.

Where the payment of tax on beer is to be deferred under the provisions of this subpart, the maximum penal sum of any bond, Form 1566 (or the total penal sums where original and strengthening bonds are filed), shall be not more than \$500,000, and a new bond shall be given on Form 1566 in a penal sum equal to the amount of the penal sum required on such bond by Part 245 of this chapter plus an amount not less than the tax on the maximum quantity of beer to be removed for consumption or sale during any semi-monthly return period, or a strengthening bond shall be filed to so increase the total penal sum of the bond (or bonds) in force on June 23, 1959. Where a strengthening bond is so filed, a consent of surety, Form 1533, shall be filed to extend the terms of the bond (or bonds) in force on June 23, 1959, to cover transactions after that date. Consent on the Form 1533 shall properly identify the bond Form 1566 to which it applies and contain the following statement of purpose:

To continue in effect said bond (including all extensions or limitations of such terms and conditions previously consented to and approved) on and after June 24, 1959, notwithstanding that the time for deferral of payment of the tax on beer removed for consumption or sale will be changed from a period of one day to a semimonthly period.
(68A Stat. 674; 26 U.S.C. 5401)

Payment of Tax

§ 170.405 Semimonthly return.

The quantities of keg and bottled beer sold or removed daily for consumption or sale during the period covered by the return, and the aggregate quantity thereof, shall be reported in the tax return, Form 2034, prepared in quadruplicate. The brewer shall include for payment on his return, Form 2034, the full amount of tax required to be determined (and not prepaid) on all beer removed from the brewery daily for consumption or sale, during the period covered by the return. Prepayments made by the brewer during the period covered by the return shall be separately shown thereon. The brewer shall file his tax return, Form 2034, with remittance for the full amount of tax due, semimonthly, covering the period from the brewer's business day beginning on the 9th day of a month through his business day beginning on the 23rd day of the same month and the period from the brewer's business day beginning on the 24th day of a month through his business day beginning on the 8th day of the next succeeding month. The tax return Form 2034, shall be filed not later than the close of the third calendar day next succeeding the 8th or 23rd calendar day of the month, as the case may be, excluding any Saturday, Sunday, or legal holiday of the District of Columbia or any statewide legal holiday of the State in which the return is required to be filed: Provided, That the return for the period ending at the close of the brewer's business day which began on June 23rd of any year shall be filed not later than the close of the second next succeeding calendar day after June 23rd, excluding any Saturday, Sunday, or a legal holiday of the District of Columbia or a statewide legal holiday of the particular State in which the return is required to be filed. A return, Form 2034, shall be filed covering each return period even though no beer was removed for consumption or sale during the period.

§ 170.406 Brewer in default; tax to be prepaid.

Where a check or money order tendered in payment of taxes on beer is not paid on presentment, or where the brewer is otherwise in default in payment of tax under

§ 170.405, no beer shall be removed from the brewery for consumption or sale until the tax has been paid as provided in § 170.407, for the period of such default and until the assistant regional commissioner finds the revenue will not be jeopardized by payment of tax as provided in § 170.405. Any remittance made during the period of such default shall be in cash or in the form of a certified, cashier's, or treasurer's check drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State, Territory, or possession of the United States, or a money order as defined in § 301.6311-1 of this chapter.

§ 170.407 Prepayment of tax.

Where a brewer is required to prepay tax under § 170.406, or where the penal sum of any bond, Form 1566, (or the total penal sums where original and strengthening bonds are filed) is insufficient for deferral of payment of tax on beer to be removed for consumption or sale, the brewer shall, before removal of the beer, file with the district director a beer tax return, Form 2034, with remittance. The word "PREPAYMENT" shall be prefixed to the title of such form. The return, with remittance, shall be filed by forwarding or delivering it to the district director before the beer is removed for consumption or sale. For the purpose of complying with this section, the term "forwarding" shall mean deposit in the United States mail, properly addressed to the district director.

(68A Stat. 614, 777; 26 U.S.C. 5061, 6311)

§ 170.408 Date of mailing and delivering of returns.

Where the return, Form 2034, and remittance are delivered by United States mail to the office of the district director, the date of the official postmark of the United States Post Office stamped on the cover in which the return and remittance were mailed shall be deemed to be the date of delivery of such return and remittance.

- 5 -

§ 170.409 Records of removals, to support Form 2034.

Each brewer shall keep a record of the beer removed from the brewery for consumption or sale, and of the beer removed from the brewery without payment of tax, to support the entries for each day shown in his tax return, Form 2034. Such supporting record shall show, with respect to each removal, (a) the date of removal, (b) the identity of the person to whom the beer was shipped or delivered (not required in the case of sales in quantities of 1/2 barrel or less for delivery at the brewery), and (c) the quantities of beer removed in kegs and bottles. Where the brewer keeps, at the brewery, copies of invoices or other commercial records containing the information required as to each such removal, such copies may be used in lieu of any other record required by this section, if they are maintained in such manner that the assistant regional commissioner is satisfied that the information may be readily ascertained therefrom by internal revenue officers. Such records shall be retained for 3 years following the close of the semimonthly return period during which the beer was removed, and shall be available for examination by internal revenue officers.

§ 170.410 Return of accounts deposited.

The provisions of section 245.116 relating to deposits with district directors of an additional remittance equal to or greater than the maximum tax liability to be incurred during any business day on beer removed for consumption or sale shall not be applicable on and after the effective date of this subpart, and such deposits heretofore made shall be returned without interest, by the district director on application by the brewer making the deposits.